

Submission of the European Network of National Human Rights Institutions (ENNHRI) on Brussels Declaration 26-27 March 2015

ENNHRI urges Council of Europe States to include in the Brussels Declaration:

1. Reference to the critical and multi-faceted role NHRIs can play in supporting the implementation of the Convention, including execution of judgments;
2. The importance of establishing adequately resourced NHRIs in compliance with the Paris Principles in each Council of Europe state party's jurisdiction; and
3. For example by inclusion of the following draft paragraphs:
“...Emphasizes the essential role National Human Rights Institutions as well as civil society organizations can play in complementing the efforts by domestic authorities in guaranteeing and protecting human rights at the domestic level;
“... Stresses the importance of establishing National Human Rights Institutions in all member states to assist in the implementation of the Convention throughout the Council of Europe”

1. Introduction

The European Network of National Human Rights Institutions (“ENNHRI”) comprises National Human Rights Institutions (“NHRIs”) from across wider Europe. NHRIs are state funded institutions, independent of government, with a broad legislative or constitutional mandate to promote and protect human rights. NHRIs are accredited by reference to the UN Paris Principles to ensure their independence, plurality, impartiality and effectiveness. ENNHRI recently established a Permanent Secretariat in Brussels.

NHRIs are critical actors for the implementation of the European Convention on Human Rights (“the Convention”), including judgments of the European Court of Human Rights (“the Court”). They are legally mandated to advise the executive and legislative branches of state on the application of international human rights standards, and may exercise litigation functions in this regard. Through their promotion mandates, they often perform educational and awareness-raising functions, which can also encourage

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implementation. In addition, NHRIs must cooperate with civil society, other national bodies and the international human rights system, which they also use in their efforts to ensure implementation of the Court's judgments. The recent High Level Conferences have recognised NHRIs' critical role in effective working of the Convention system, such as in the Brighton Declaration (at article 9(a)(i)).

ENNHRI has been an active stakeholder in discussions and proposals regarding implementation of the Convention system for a number of years and has observer status at CDDH and its subordinate bodies. We also participated actively at the High Level Conferences on the Future of the Court and Convention system in Interlaken, Izmir, Brighton and Oslo. We have also engaged at Wilton Park and other Court reform conferences and seminars through our Legal Working Group.

In addition ENNHRI works for implementation of the Convention through *amicus curiae* submissions to the Court and extensive work on the execution of judgments, including a check-list for use by NHRIs, and capacity building on the use of Rule 9. ENNHRI has also engaged with the Parliamentary Assembly of the Council of Europe (PACE), the Directorate and the Commissioner for Human Rights, with a view to supporting NHRIs' work for the implementation of the Convention.

ENNHRI welcomes the Belgian Chairmanship's focus on implementation of the Convention as a shared responsibility, including the execution of judgments of the Court. ENNHRI considers that the essential objective of this process should be to ensure the efficient working of the Convention system for the vindication of rights for all persons within the Council of Europe Member States's jurisdiction.

2. Proposals for the Brussels Draft Declaration

While acknowledging its opportunity to provide an oral intervention at the Brussels Conference in March 2015, ENNHRI also welcomes this opportunity to comment on the draft Declaration, which will be finalized on the occasion of the Brussels Conference ("the Draft Declaration").

2.1 NHRIs' role in implementing the Convention

ENNHRI urges the States Parties to include in the Draft Declaration:

- ***the critical and multi-faceted role of NHRIs to monitor and facilitate the implementation of the Convention on a national level; and***
- ***the need for adequately resourced NHRIs, in compliance with Paris Principles, in each Council of Europe Member State***

ENNHRI underlines the crucial role of NHRIs in relation to the implementation of the Convention through their legal mandates to:

- Identify and address the structural and systemic concerns which, at the national level, impede the full implementation of the Convention;
- Monitor the human rights situation in their jurisdiction, through investigations, legislation and policy review, and liaison with civil society organisations,
- Publish research and recommendations and pursue of domestic remedies to address concerns arising regarding the implementation of the Convention;
- Advise the executive and legislative¹ branches of state on the application of the Convention, and whether legislation and policy is in compliance Convention, some with the power to bring litigation in this regard;
- Review the execution of judgments from the Court through liaison with the national legislature, executive, courts and other national actors;
- Report to the Council of Europe bodies the status of the implementation of the Convention, including the execution of judgments, within their national jurisdiction.
- Handle individual complaints, or provide legal assistance to individuals seeking to enforce their Convention rights;
- Provide human rights education and training to promote the awareness and understanding of the Convention by national actors, civil society and the general public. This includes providing applicants better information on the admissibility criteria

Each of these functions assists in the implementation of the Convention and, when used in combination, they act as mutually reinforcing approaches to addressing an implementation gaps. Through their work, NHRIs are also key actors for the strengthening of subsidiarity. This critical and multi-faceted role should be acknowledged in the Brussels Declaration.

Previous declarations by CoE, on the reform of the Court, have recognised and stressed the crucial role NHRIs play in relation to the implementation of the Convention and execution of judgements:

- Interlaken Declaration, 'continuing to increase, where appropriate in co-operation with national human rights institutions or other relevant bodies, the awareness of national authorities of the Convention standards and to ensure their application;', cf. para. B (4)(a); and
- Brighton Declaration, 'Considering the establishment, if they have not already done so, of an independent National Human Rights Institution', cf. para. 9 (c)(i)

¹ The Belgrade principles acknowledge NHRIs' role and their relationship to national Parliaments (see <http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf>).

and ' Invites the Court to consider, in consultation with the States Parties, civil society and National Human Rights Institutions, whether;', cf. para. D (20)(g).

Given that the Brussels Declaration will focus specifically on the implementation of the Convention, and given the central role of NHRIs in this regard, **ENNHRI urges the States Parties to include a specific article on NHRIs in the Draft Declaration, which recognises the multi-facted and critical role of NHRIs in supporting the implementation of the Convention.**

Further, given that not all Council of Europe States Parties have a NHRI in their jurisdictions, **ENNHRI urges the States Parties to include in the Draft Declaration the need for each Council of Europe Member State to establish an adequated resourced NHRI, which is in compliance with the Paris Principles.**

2.2 Other Recommendations

ENNHRI considers that the main challenge to the Convention system into the future is the ability of the Council of Europe to operate as an international organisation to ensure compliance with the Convention by its individual Member States. This has been the experience particularly over the last fifteen years, when the backlog of cases became of central concern and where there has been a failure by a minority of individual States to address systemic issues regarding compliance with the Convention. This failure in turn has generated a large volume of repetitive applications, while also generating an unsustainable number of routine cases that require ongoing supervision at Committee of Ministers level. ENNHRI therefore supports the terms of the draft declaration with regard to repetitive applications and the need for further measures to ensure the full, effective and rapid execution of all the judgments of the Court, including judgments raising complex and/or sensitive issues at national level.

(a) Execution of judgments

ENNHRI further recommends that consideration be given to the following proposals:

- That national judges (the judiciary being a key organs of the state) be proactively encouraged to read, understand and implement the judgments of the Court – and not leave it to the executive and state agents alone;
- That there be deeper engagement between the Court and national judiciaries so both better understand the other;
- Court judgments should be understandable and clear on a general measures issue, in order that a link between general measures and Article 46 will assist the Department of Execution of Judgments in overseeing execution and the national authorities in effecting execution.

- There should be increased synergy between the Court and the Department of Execution of Judgments on how pilot judgments are identified and executed.
- There should be increased synergy between the Department of Execution of Judgments and NHRIs to ensure that the Department of Execution of Judgments receives comprehensive information on the execution of judgments in the state concerned.
- The Committee of Ministers should offer experts to engage directly with a state's national authorities on law reform measures required in cases of concern.
 - The delegates on such missions could include state agents from Member States.
 - The NHRI of the state concerned and other relevant organisations or civil society should be consulted on what is required nationally to execute the relevant judgment(s) of the Court.
 - Such missions should link in with cooperation and assistance programmes run by other organs of the Council of Europe.

ENNHRI suggests that, following a Court judgment, an effective and efficient manner of execution should include the following:

- The state should designate a coordinating official empowered to ensure that execution occurs.
- The executive, the legislature and the judiciary should be seized of the matter as appropriate to their roles as organs of the state.
- The draft Action Plan should be furnished to the NHRI (where one exists) and civil society, where relevant, for consultation.
- The relevant parliamentary committee should be advised of the judgment and the proposed Action Plan to ensure its execution.
- The legislation or amending practice should be implemented in a timely manner to clearly address the lacunae in the law or practice, as identified by the Court.

(b) Supervision of the execution of Court judgment: Role of CoM

The role of the Committee of Ministers is crucial to the effective working of the Convention system, as it oversees the measures taken by Member States to comply with Court judgments. However, the Committee of Ministers is by its nature highly politicised, and this is reflected in the unwillingness of the Committee to place political pressure on recalcitrant States.² In this regard ENNHRI recommends:

² See for instance, *CDDH report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner*, CDDH (2013) R79, Addendum 1, 29 November 2013, wherein a large range of options are examined for more effective measures to ensure states comply with Court judgments, but where no recommendation is made to the Committee of Ministers in relation to any specific measure it might adopt or whether to make any change at all.

- The Committee of Ministers should consider concrete measures in relation to states with repetitive applications, to which the states concerned should respond urgently. Such measures should commence with support for the state concerned, but also have the ability to move from incentives to graded sanctions where the state proves intransigent in relation to execution.
- The Department of Execution of Judgments should be better resourced for its role in supporting the Committee of Ministers.
- Better information on Article 41 compensation and costs should be disseminated to states and to applicants.
- The Committee of Ministers should invoke Article 46 and engage with the Court more effectively regarding the execution of judgments, which may in turn bring greater pressure to bear on the individual state concerned.
- The Committee of Ministers should actively request information from civil society organisations or NHRIs under Rule 9 of its procedures, in those cases where such information would enhance the supervision process.

(c) Implementation at National Level

As noted above, and as was recognised in the Brighton Declaration, the primary reason for the large number of applications to the Court is the failure by States to implement the Convention effectively, and thereby ensure the protection of individual rights. This means that state officials and parliamentarians do not have Convention obligations sufficiently in mind when devising policies or procedures, when creating new national legislation, or when implementing national laws and policies. Violations that could have been avoided occur, and national courts do not have the powers or the ability to provide an effective remedy to the victims, even where it is clear from existing Court caselaw that a violation has occurred.

Improvements therefore need to be made at each stage of the process so as to implement the Convention effectively at national level, including national authorities having proper regard to developing Court jurisprudence. This would then lead to fewer cases being brought overall and in particular fewer repetitive cases, leaving capacity at Court level for those cases which raise issues that are genuinely new or difficult.

ENNHRI considers that existing mechanisms for national implementation should be strengthened, and in particular the work of the Committee of Ministers in ensuring effective implementation of the court's judgments.

Further specific work on implementation at national level that could be taken forward includes:

Greater assistance to Member States in developing effective domestic remedies, including those states with a federal system, where specific attention should be paid to ensuring the implementation of judgments at all competent levels of government;

- Consideration of the role that NHRIs, and other relevant bodies including civil society, could play nationally to improve implementation of the Convention, and in particular whether further encouragement or assistance in setting up an NHRI could be given to Members States who do not currently have an NHRI;
- Consideration of sanctions against states who fail to implement the court's judgments and thereby create repetitive applications;
- Elaboration of guidelines on drawing conclusions from precedential court judgments against another state (where the same problem of principles exists in a different legal jurisdiction);
- Enhancing the role of the State agent *vis á vis* other state officials, as the primary national focal point to ensure national implementation of Convention provisions; and
- Encourage Member States to translate the judgments of the Convention into their official languages, or at a minimum disseminate a summary of the judgment in their official languages.

3. Conclusion

ENNHRI will continue its active work to support the implementation of the Convention. We will provide an oral intervention at the Brussels Conference, and we remain available to participate in future dialogue on this important subject for the safeguarding of human rights in Europe.